UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MOSSACK FONSECA & CO., S.A., BUFETE MF & CO., JURGEN MOSSACK and RAMON FONSECA	:	
Plaintiffs,	:	CIVIL ACTION NO. 3:19-cv-01618
v.	:	
NETFLIX INC.	:	October 17, 2019
Defendant.	:	

DEFENDANT NETFLIX, INC.'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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Defendant Netflix, Inc. ("Netflix" or "Defendant") respectfully submits this memorandum of law in opposition to Plaintiffs' motion for a temporary restraining order and preliminary injunction against the distribution of Defendant's film ("Plaintiffs' Motion").

PRELIMINARY STATEMENT

Plaintiffs' Motion should be denied for a host of reasons. First, Plaintiffs are seeking an eleventh hour gag order against constitutionally protected speech, mere days before the motion picture at issue herein is to be released on Netflix. As the U.S. Supreme Court long ago recognized: "The importance of motion pictures as an organ of public opinion is not lessened by the fact that they are designed to entertain as well as to inform." *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 501 (1952). As is explained in detail below, Defendant's film, while entertaining and largely comedic, is intended to bring attention to the abuse of offshore shell corporations and tax shelters, and it is an indictment of the legal system that permits them. Plaintiffs' Motion, which seeks a virtually unheard of prior restraint on speech, is thus an affront to established First Amendment principles. Second, Plaintiffs have utterly failed to demonstrate the irreparable harm that is an essential prerequisite to the emergency relief they seek. Indeed, Plaintiffs' delay in filing their motion compels the conclusion that there *is* no urgency or irreparable harm. Moreover, Plaintiffs admit that the reputational harm that they claim they might suffer has long since occurred as a result of the news media frenzy engendered by the 2016 publication of the Panama Papers. Third, Plaintiffs have not demonstrated a likelihood of success on the merits, nor can they pass the constitutional requirement of showing actual malice on Netflix's part. And Plaintiffs' Lanham Act claims fail as a matter of law. Their claim of dilution by "tarnishment" of their logo – the use of which in the film is also protected under established First Amendment jurisprudence – is laughable, given that the Complaint acknowledges that their reputations have

already been so blackened as a result of the spotlight that the international press has been shining on Plaintiffs for the last three and a half years – the result of which was the loss of all of their clients, banks refusing to do business with them and the shuttering of their business.

The film at issue – *The Laundromat* (the "Film") – was inspired by the notorious Panama Papers, the 11.5 million documents that were hacked from Plaintiffs' law firm by an anonymous whistleblower, the 2016 release of which revealed over 200,000 offshore shell corporations and bank accounts set up by Plaintiffs that had been abused by the elite and powerful to protect their interests from exposure to tax, legal and other liabilities. The Panama Papers received worldwide media attention, due in substantial part to the revelations of shell corporations and tax shelters used by innumerable world leaders and celebrities, and their disclosure has played an important role in criminal prosecutions. By November 2016, Europol reported that it had found 3,469 probable matches to criminal and terrorist organizations when they compared the Panama Papers to their own files. Similarly, the Panama Papers provide an evergreen resource for journalists to cross-check as stories develop involving allegedly corrupt actors and politicians, including those currently occupying headlines in the U.S. (*See* Declaration of Tom J. Ferber, dated October 16, 2019 ("Ferber Decl."), Ex. G.) The Film, which The New York Times described as "a didactic comedy, an earnest lesson in political economy dressed up as a farce" (https://www.nytimes.com/2019/09/25/movies/the-laundromat-review.html?searchResultPosition=1), is a moral indictment of the "massive and pervasive corruption of the legal system" and the elites who have no incentive to stop tax evasion, including in the United States, as is stated in a central character's closing monologue that breaks the "fourth wall" to sound an alarm directly to the audience.

Plaintiffs, attorneys who were licensed in Panama and their affiliated entities, "were primarily engaged in the business of forming and maintaining offshore companies … for clients." (Compl. ¶¶ 1-3, 6.) While implying that most of the entities they set up were legitimate, *Plaintiffs acknowledge that a portion of the offshore corporations which they created for their clients were subsequently utilized for criminal activity, including money laundering, tax evasion, bribery and/or fraud.* (Compl. ¶ 32.) Plaintiffs' Complaint is replete with allegations about the extensive damage done to Plaintiffs' business and reputations as a result of the massive international media coverage of the Panama Papers, which "led to closure of [their] offices and ultimately the loss of [their] entire client base" as well as two criminal prosecutions in Panama and an anticipated one in the United States. (Compl. ¶¶ 34 – 42, 124.)

Plaintiffs have inexplicably delayed in seeking the extraordinary relief of a temporary restraining order, waiting until the end of the day on October 15, 2019 to file their application. News that Netflix had "committed to finance and release" the Film, as well as the disclosure of its a-list cast and director, first made headlines over a year ago. (Ferber Decl., Ex. H.) Advertising for the Film began on or about August 28, 2019. (Declaration of Christian Davin, dated October 16, 2019 ("Davin Decl."), ¶ 4.) Plaintiffs claim to have been aware of the full Film's content as of September 10, 2019. (Aff. of Arthur Ventura, Jr. at ¶ 20.) Yet Plaintiffs did not even give Netflix notice of their purported grievance until late in the day on Friday, October 11, 2019, when they sent a draft of the Complaint – a draft which was dated October 4, 2019. (Declaration of Kate Chilton, dated October 16, 2019 ("Chilton Decl.", ¶ 2.) The supporting affidavit of Arthur Ventura, Jr. was sworn to on the same date. (*See* Ventura Aff. at p. 14.) Thus, Plaintiffs have admittedly known all about the Film since at least September 10, and had a Complaint and other papers drafted nearly two weeks ago, but they waited until two and a half

days before the Film's release on Netflix's streaming platform (and after it was theatrically released) to file their motion. Plaintiffs should not be allowed to benefit from a purported emergency of their own making; if anything, they should be penalized for their delay, which eviscerates their assertions of irreparable harm.

FACTUAL BACKGROUND

The Panama Papers Scandal

In April 2016, newspapers and media outlets around the world began publishing reports regarding the methods used by wealthy and powerful people to hide income and avoid taxes through the use of offshore bank accounts and shell companies. (Compl. ¶¶ 33-36). The primary source for these bombshell reports was a cache of 11.5 million Mossack Fonseca & Co., S.A. (the "Mossack & Fonseca Firm") documents an anonymous whistleblower had provided to journalist Bastian Obermayer of the German newspaper Suddeutsche Zeitung. (Compl. ¶ 28). Obermayer enlisted the International Consortium of Investigative Journalists to review the massive corpus of documents for approximately one year before publishing any reports regarding their contents. (Compl. ¶¶ 30-31). These documents, dubbed the Panama Papers, referenced over 200,000 offshore entities created by the Mossack & Fonseca Firm, including many used for the benefit of rich and famous people in both public and private sectors around the world. (Compl. ¶ 29).

The reporting on the Panama Papers and the Mossack & Fonseca Firm's role in facilitating tax avoidance and offshore banking for the wealthy precipitated numerous governmental investigations and prosecutions, including two legal proceedings brought by Panamanian authorities against Jurgen Mossack ("Mossack") and Ramon Fonseca ("Fonseca"). (Compl. ¶ 41). Since the release of the Panama Papers, Mossack and Fonseca have not hidden from the international controversy. To the contrary, as Plaintiffs admit, Mossack and Fonseca spoke with

investigative journalist Jake Bernstein. (Compl. ¶ 53). In addition, Mossack gave interviews to CNBC and The Wall Street Journal in April 2016, and Fonseca gave an interview to reporters, excerpts of which were subsequently published in a Reuters article and an AP Article in February 2017. (Declaration of Tom J. Ferber, dated October 16, 2019 ("Ferber Decl."), ¶ 6 & Exs. D-F).

As a result of the ongoing criminal investigations and prosecutions, Mossack and Fonseca have been subject to arrest and bail conditions that confine them to Panama. (Compl. at p.5, ¶ 42). In the immediate aftermath of the reporting on the Panama Papers (*i.e.*, well before the production or release of *The Laundromat*), banks refused to do business with Plaintiffs, clients ceased to do business with Plaintiffs, and Plaintiffs' law firm closed. (Compl. ¶¶ 38-40).

In or about November 2017, journalist Jake Bernstein released a "thoroughly researched" book regarding the previously unknown financial dealings of wealthy individuals and institutions that made use of the offshore banking and financial systems, entitled *Secrecy World: Inside the Panama Papers Investigation of Illicit Money Networks and the Global Elite* (the "Book"). (Compl. ¶¶ 46-58). Bernstein used the Panama Papers documents provided by the whistleblower, as well as interviews with Mossack and Fonseca, as source material for the Book. (Compl. ¶¶ 46-58).

The Laundromat

Sometime following the publication of the Book, Netflix agreed to distribute a film about the Panama Papers that used the Book as inspiration. (Compl. ¶¶ 60-61). The resulting feature film is entitled *The Laundromat* (the "Film"). (Compl. ¶¶ 80-84). The Film stars the actors Meryl Streep, Gary Oldman, and Antonio Banderas and was directed by Steven Soderbergh. (Compl. ¶¶ 80-84). The Film does not purport to be a factual documentary or non-fiction adaptation of the Book. To the contrary, as Plaintiffs acknowledge, the Book is now marketed as the "**Inspiration**

for the Major Motion Picture." (Compl. ¶ 67, emphasis added). As indicated in the Film's promotional trailer – which is obviously not a pure dramatic presentation of actual facts, but rather a comedic morality tale about a system which invites and protects abuse – the Film is advertised as "**Based on** Some Real Shit," (*see* Compl. ¶ 78 at 0:23), not as a non-fiction documentary. The full feature version of the Film opens with a title card facetiously stating that the Film is "**Based On** Actual Secrets." (Ferber Aff., Ex. B (emphasis added)). The Film ends with a disclaimer at the 1 hour, 34 minute, 25 second mark stating "While the motion picture is inspired by actual events and persons, certain characters, incidents, locations, dialogue, and names are fictionalized for the purpose of dramatization. As to any such fictionalization, any similarity to the name or to the actual character or history of any person, living or dead, or actual incident is entirely for dramatic purposes and not intended to reflect on any actual character or history." (Ferber Aff., Ex. C).

Moreover, while the Film has characters bearing Mossack and Fonseca's names, they are cartoonish narrators who set up shell corporations around the world; it does not depict them as direct participants in criminal activity. Rather, the Film saves its pointed critiques for the opacity of the global banking system and the systemic corruption of wealthy individuals that permit that system to perpetuate itself.

These palpably farcical characters open the Film with an explanation about the genesis of money and credit with comedic dialogue about the impracticality of bartering bananas (which "turn brown over time") and cows (which "can wander away"). "Credit," they explain, stands in for the "tangible" cow, and because of credit, "even if you didn't have all the bananas you need … you could borrow bananas from the future." Noting that the world of finance has since "gotten a little more complicated" and involves trading things that are "very different from cows," they then

introduce the vignettes that follow as stories "that are not about us; they are more about you." These narrators remain farcical characters. As they describe their business, they state that they don't even know who all of their clients are.

Later in the Film, after the vignettes of cheating and other illicit activity by other characters, these characters exclaim that the idea for the system of shell corporations and tax shelters that has been depicted came from the United States – "where most ideas about money come from." They explain that it started with Delaware's "corporate-friendly tax laws." They continue: "The director of this movie has five [Delaware corporations]. Even our writer has one." And it's legal – it's called "tax avoidance." The Film depicts the April 2016 hacking of the Panama Papers by "John Doe," and their subsequent worldwide publication. Plaintiffs' tax shelter and shell corporation mill is exposed. President Obama is seen saying that the problem is that a lot of this is legal. The narrators (*i.e.,* Mossack and Fonseca) explain that they "didn't write the laws; [they] just wrote contracts!" They are ruined by the ensuing scandal, close their businesses, and are arrested because some of the shell entities they formed have been connected to suspected criminals. Sitting in jail (or what is revealed to be dramatic/comedic jail scenery), Mossack complains: "You want to go back to bananas?!" The Film ends with words from "John Doe's" so-called "manifesto," calling on governments around the world to end the pervasive corruption described in the Film.

Netflix began advertising the Film via print advertisements and trailers on August 28, 2019. (Davin Decl. ¶ 4). The Film was first screened on September 1, 2019 at the Venice Film Festival. (Davin Decl. ¶ 2). The Film was subsequently exhibited on September 9, 2019 at the Toronto Film Festival, and then was released in select theaters in New York and Los Angeles on September 27, 2019. (Davin Decl. ¶ 2). The Film is scheduled to become available to Netflix's subscribers via its streaming service on October 18, 2019. (Davin Decl. ¶ 3).

The Complaint

In a six page "preliminary statement" of unnumbered paragraphs, the Complaint alleges, *inter alia*, that the Film's trailer (and therefore the Film) shows the "'download' of hacked 'Panama papers' in progress." (Compl. at p.3). The Complaint acknowledges that "the movie has been released into limited public engagements" and that its "expected release date to a general public audience in theaters was September 27, 2019." (*Id.* at p.5). The Complaint alleges that "the anticipated release dates correspond with times during which the Plaintiffs will be defending criminal charges against them in Panama," and speculates that the Film "will likely precipitate Panamanian prosecutors to investigate any accusation or criminal implications revealed therein." It also alleges that "the two current prosecutions have resulted in 'country arrest' and bail, and both cases were precipitated by media accounts of Panama Papers allegations." (*Id.*) It further alleges that Mossack and Fonseca "are the subjects of an FBI investigation in the Southern District of New York that could result in a Trial [sic] in the United States" and complains that the Film "poses an immediate threat and harm to the Plaintiffs' fair Trial [sic] rights." (*Id.* at 6).

The Complaint subsequently makes the following allegations in numbered paragraphs: Mossack and Fonseca "were licensed attorneys … residing in the Republic of Panama." (*Id.* ¶ 1). Plaintiffs "were primarily engaged in the business of forming and maintaining offshore companies … for clients …." (*Id.* ¶ 6). Plaintiff's "products" were sold in Panama and other countries commonly referred to as "tax havens." (*Id.* ¶ 7). The hacked Panama Papers referenced over 200,000 entities created by Plaintiffs. (*Id.* ¶¶ 28-29). A so-called "minute percentage" of the over 200,000 offshore corporations that Plaintiffs created for their clients were subsequently utilized for criminal activity including money laundering, tax evasion, bribery and/or fraud. (*Id.* ¶ 32). As a result of the revelations from the "hack and release" of the Panama Papers, Plaintiffs

were rumored to have dealt with and/or advised various heads of state and other persons "on the subject matter of tax avoidance, tax evasion, money laundering, fraud and/or other crimes." Further, Plaintiffs were rumored to have dealt with and/or advised "notorious drug cartel and/or other organized crime leaders" on such subjects. (*Id.* ¶¶ 34-35). The press and media generated by the Panama Papers hack damaged Plaintiffs' "client relations and ongoing business prospects." (*Id.* ¶ 37). As a result of news reports of the Panama Papers' revelations, and rumors about Plaintiffs' alleged clients, resulted in "banks and other third parties refus[ing] to do business" with Plaintiffs." (*Id.* ¶ 38). "Plaintiffs all faced bank account closures and to date, all [Plaintiffs] remain unable to bank anywhere in the world." (*Id.* ¶ 39). Plaintiffs' "inability to bank led to closure of its offices and ultimately the loss of its entire client base." (*Id.* ¶ 40). "As a result of the 'hack and release' investigations the Plaintiffs . . . have suffered damage to the goodwill and value of their businesses." (*Id.* ¶ 43). Plaintiffs complain about their allege portrayal in the Film's trailer (*id.* ¶ 79), and describe the various vignettes in the Film (*id.* ¶¶ 94-97). The Complaint alleges that the use of Plaintiffs' logo in the Film and trailer "greatly diminishes and/or dilutes" the logo's "value and goodwill." (*Id.* ¶¶ 101, 105). Plaintiffs also allege that "as a direct and proximate result" of the Film, "Plaintiffs' personal and professional reputations have been injured." (*Id.* ¶ 127).

ARGUMENT

The standard for securing the extraordinary relief of a preliminary injunction in the Second Circuit is well-established. The proponent of the motion carries the heavy burden of showing: "(1) irreparable harm and (2) either (a) likelihood of success on the merits, or (b) sufficiently serious questions going to the merits of its claims to make them a fair ground for litigation, plus a balance of the hardships tipping decidedly in favor of the moving party." *Miller v. Miller*, No. 3:18-cv-01067 (JCH), 2018 WL 3574867, at *2 (D. Conn. July 25, 2018) (citations omitted).

"Additionally, the moving party must show that a preliminary injunction is in the public interest." *Id*. (citation omitted).

"A showing of irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction." *Id*. (quoting *Faiveley Transp. Malmo AB v. Wabtec Corp*., 559 F.3d 110, 118 (2d Cir. 2009)). "To satisfy the irreparable harm requirement, [Plaintiffs] must demonstrate that absent a preliminary injunction [they] will suffer an injury that is neither remote nor speculative, but actual and imminent and one that cannot be remedied if a court waits until the end of trial to resolve the harm." *Brooks v. Consensus Strategies, LLC*, No. 3:07-cv-0560 (PCD), 2007 WL 9754573, at *2 (D. Conn. June 18, 2007) (quoting *Grand River Enterprise Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007)). Irreparable harm exists only where a monetary award cannot provide adequate compensation for the alleged injury. *Id*. The standard for the issuance of a temporary restraining order is the same as that for the issuance of a preliminary injunction. *Id*. Here, Plaintiffs have not met their heavy burden.

I. PLAINTIFFS HAVE FAILED TO DEMONSTRATE IRREPARABLE HARM

As noted above, where a plaintiff cannot prove irreparable harm, a preliminary injunction must be denied. *Miller*, 2018 WL 3574867, at *2 (citing *Faiveley*, 559 F.3d at 118). Here, Plaintiffs cannot prove irreparable harm for two independent reasons. First, the damage Plaintiffs allege has already substantially occurred. This alone is sufficient basis for the Court to deny Plaintiffs' request for a preliminary injunction. *See Brooks*, 2007 WL 9754573, at *2 (denying temporary restraining order and preliminary injunction where "[t]he harm that [plaintiff] alleges in his Complaint has already occurred"); *Marcy Playground, Inc. v. Capitol Records*, 6 F. Supp. 2d 277, 282 (S.D.N.Y. 1998) (denying preliminary injunction against record albums that had

already been released without crediting plaintiffs, noting the alleged injury "already has occurred in virtually all material respects.").

Here, Plaintiffs complain that they are portrayed in *The Laundromat* as being behind a massive system of shell corporations and offshore accounts that provide cover for a variety of unethical and criminal activity, and that portrayal will result in injury to their personal and professional reputations. (Compl. ¶¶ 126-28.) However, Plaintiffs acknowledge in their Complaint that some of the offshore companies created by Mossack Fonseca ***were in fact involved in criminal activity***. For instance, they admit that at least some percentage of offshore corporations created by Mossack Fonseca "appear[] to have been utilized by some [ultimate end users] for criminal activity including, but not limited to, money laundering, tax evasion, bribery and/or fraud." (*Id.*, ¶ 32; *see id.*, ¶ 48 (acknowledging that some "number of companies sold by Plaintiffs to original clients were connected to [ultimate end user] criminal activity".) Plaintiffs further object that the Film inaccurately portrays them as having connections to Cartel murders and Russian gangster money laundering. (*Id.*, p. 5.[1]) However, mere pages later, they admit that so-called rumors resulting from the release of the Panama Papers themselves – years before the release of Defendants' Film – painted them as involved with Russian President Vladimir Putin, former President of Ukraine Petro Poroshenko, as well as "notorious drug Cartel and/or other Organized Crime leaders." (*Id.*, ¶¶ 34-35.) Clearly, Plaintiffs' reputations were sullied long before the release of Defendants' Film. *See Guccione v. Hustler Magazine, Inc.*, 800 F.2d 298, 303 (2d Cir. 1986) ("[A] plaintiff's reputation with respect to a specific subject may be so badly tarnished that he cannot be further injured by allegedly false statements on that subject.") (citation omitted).

[1] The first seven pages of Plaintiffs' Complaint contain unnumbered paragraphs, constraining Defendant to reference only page numbers.

Indeed, as Plaintiffs further acknowledge, long before the release of Defendant's Film, the "press and media generated by the Panama Papers hack severely damaged [their] client relations and ongoing business prospects." (*Id*., ¶ 37.) Banks and other entities refused to do business with them, and they ultimately were forced to shutter their doors due to the "loss of [their] entire client base." (*Id*., ¶¶ 38-40.) As in *Marcy Playground*, "a preliminary injunction here would be very much like locking the barn door after the horse is gone." 6 F. Supp.2d at 282.

Plaintiffs offer further speculation about potential harm that might result from the possibility that Panamanian prosecutors would bring additional charges against them, or change the prosecution of their pending cases, as a result of the conduct allegedly portrayed in the Film. As an initial matter, the Film is a largely comedic morality tale that clearly states it is "*based on*"[2] real events, but that it is an obviously fictionalized story. *Davis v. Costa-Gavras*, 654 F. Supp. 653, 657 (S.D.N.Y. 1987) (citing disclaimer as evidence that "film does not purport to depict . . . the events precisely as they occurred"). As the Supreme Court has recognized, audiences understand the difference between fictionalized portrayals and news reporting, which is intended to be literally true and accurate. *Masson v. New Yorker Magazine, Inc*., 501 U.S. 496, 513 (1991). Moreover, while the Film identifies Plaintiffs as central figures in the story it is telling about the use of offshore corporations, it does not portray them directly participating in the murders, drug cartels, and other criminal activity referenced in the Complaint.[3] Rather, it makes the point that much, if not all, of their conduct is *legal*, and its conclusion makes clear that it is an indictment of the system that enables such conduct. Plaintiffs maintain throughout their papers that they are

[2] The trailer, which is repeatedly referenced in the Complaint (*see, e.g.*, Compl., ¶ 78) offers a tongue-in-cheek description of the Film as "Based on Some Real Shit." The Film itself similarly notes with a wink that its largely comedic presentation is "Based on Actual Secrets." (*See* Ferber Decl. Ex. B.)

[3] The Mossack character does appear at the end of the vignette about a wealthy African businessman residing in the U.S. who uses a shell game to bribe and then cheat his own daughter, but that conduct is not criminal.

portrayed as villains in the Film, but they themselves supply evidence that that was neither the intent of the creators nor the takeaway of a reasonable viewer.[4] For instance, Plaintiffs note that the director, Steven Soderbergh, stated in an interview:

> Scott and I were very adamant that they [Jurgen Mossack and Ramon Fonseca] not be stock villains, because we felt they as people were more complicated than that and the situation itself was more complicated than that. They did not invent these structures. This has been going on for a long time. They just figured out a way to do a high-volume business creating these kind of entities.

(Pl. Br. at 24.) In other words, the Film is a critique of what it views as a corrupt system that Plaintiffs helped enable, and that is the anticipated perception of an objective viewer of the Film. Thus, the harm that Plaintiffs allege is highly unlikely to occur as a result of the Film.

Indeed, Plaintiffs themselves acknowledge the speculativeness of the prospective harm that they allege. For instance, Plaintiffs plead that their portrayal in the Film "*may subject* Plaintiffs to unnecessary and unwanted legal attention," and that they "*could be subjected* to additional bail and/or conditions for each new crime imputed to them in the movie." (Compl. at p. 5.) Likewise, they allege that the Film portrayal "*stand[s] to*" pollute "a *potential* jury pool" in the U.S. (*Id*. at p. 6.) These claims are quite simply too remote and speculative to support a finding of irreparable harm. As for the purely speculative possibility of further investigations in Panama, Plaintiffs are already being prosecuted there (*id.* ¶¶ 41-42), presumably for their potential involvement in corruption, money laundering, and tax fraud, all of which were the subject of the Panama Papers. It strains credulity to conclude that the Film will cause investigators to widen their investigation,

[4] Plaintiffs cite to the Affidavit of Arthur Ventura to support speculative propositions such as that the streaming distribution of the Film will subject Plaintiffs to criminal prosecution by the FBI. But Mr. Ventura's various "opinions" are not based on sufficient facts nor are they the product of reliable principles and methods. *Cf.* Fed. R. Evid. 702(b)-(c). Rather, Mr. Ventura opines, without any reasoned, scientific basis, or polling, or survey data, that audiences will leave the Film with the impression that Mossack and Fonseca were directly responsible for certain criminal activities. But Mr. Ventura's long career in law enforcement does not make him a reliable arbiter of whether a given scene will have a "chilling effect" on the Film's audience. (Ventura Aff. ¶ 32).

or that the Film's creators will be at fault if Panamanian prosecutors conclude that additional charges should be brought against Plaintiffs.

Plaintiffs' argument about polluting a potential jury pool is yet more remote given that they have not even been charged in the United States. (Pl. Br. at 9-10.) Plaintiffs attempt to shore up their jury pool argument by pointing to the indictment of one of their associates and the reference of their firm in the charging papers. (*Id.* at 9.) However, Plaintiffs have no privileged view into the minds of the federal prosecutors in the Southern District of New York. And even if Plaintiffs were charged, the release of the Film is unlikely to reach a wider audience than the published reports of the Panama Papers, nor is it likely to prejudice every potential New Yorker juror who may not have already read about and formed an opinion of Plaintiffs. In fact, that is precisely what measures such as voir dire are intended to protect against. *See Hunt v. National Broadcasting Co.*, 872 F.2d 289, 296 (9th Cir. 1989) (denying TRO and preliminary injunction against broadcast of docudrama concerning plaintiff's planning and commission of a murder, notwithstanding his claim the Film would pollute the jury pool in his pending case, finding that he had failed to meet the high burden of showing that the absence of a preliminary injunction would prevent securing twelve jurors who could render an unbiased verdict, including because he failed to consider alternatives to prior restraint, such as voir dire, jury instructions, or change of venue). In sum, these allegations are textbook examples of remote and speculative harm that cannot support the issuance of a preliminary injunction. *Roy Exp. Co. Establishment v. Trustees of Columbia Univ.*, 344 F. Supp. 1350, 1353-54 (S.D.N.Y. 1972) (finding possibility of future harm insufficient to support issuance of preliminary injunction).

Plaintiffs themselves are likely aware of these weaknesses in their case, given that they delayed for nearly a year and a half from the publication of Mr. Bernstein's book on which the

Film was allegedly based (in November 2017, according to Amazon[5]), which they also claim to be defamatory[6] (Compl. ¶ 54), and then continued to delay another approximately six weeks while the Film was being advertised throughout the United States in print advertisements and on YouTube beginning August 28, 2019, shown at international film festivals, and then released in theaters in New York and Los Angeles on September 27, 2019. (Davin Decl. ¶¶ 2-4.) Based upon the October 4, 2019 date in the draft Complaint forwarded by Plaintiffs' counsel to Netflix on the evening of Friday, October 11, the Complaint had been complete for at least a week, but Plaintiffs chose not to file or serve it. Plaintiffs' substantial delay in seeking to enjoin the Film – all while Netflix invested resources in securing theater space, creating advertising, and disseminating marketing (Davin Decl. ¶¶ 5-7) – weighs heavily against a finding of irreparable harm. *Citibank, N.A. v. Citytrust*, 756 F.2d 273, 276 (2d Cir. 1985) (denying preliminary injunction due to plaintiff's 10-week delay, and noting, "Preliminary injunctions are generally granted under the theory that there is an urgent need for speedy action to protect the plaintiffs' rights. Delay in seeking enforcement of those rights, however, tends to indicate at least a reduced need for such drastic, speedy action.") (citations omitted); *see Tom Doherty Assocs. v. Saban Entm't, Inc.*, 60 F.3d 27, 39 (2d Cir. 1995) (holding that "[a] district court should generally consider delay in assessing irreparable harm," particularly where "the defendant had taken costly steps during the period of delay that would be at least temporarily undone by injunctive relief") (citations omitted).

The cases Plaintiffs cite in support of their claimed irreparable harm do not salvage their failed position. Plaintiffs claim that they have established irreparable harm if they will be deprived of a constitutional right, presumably referencing their speculative claim that the Film *could* impact

[5] Available at https://www.amazon.com/Secrecy-World-Investigation-Illicit-Networks/dp/1250126681.
[6] Significantly, Plaintiffs apparently never asserted legal claims against the book, even though the Complaint contains a litany of allegations about it and its author. (*See, e.g.*, Compl. ¶¶ 46-59.)

either a Panamanian investigation or a potential jury pool in the U.S. Putting aside the speculativeness of the harm, the cases Plaintiffs cite are completely inapposite to the case at hand. Both *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir. 1984), which implicates the Eighth Amendment in a prison overcrowding case, and *Heublein v. F.T.C.*, 539 F. Supp. 123 (D. Conn. 1982), concerning Federal Trade Commission approval for a corporate merger, involve state actors allegedly depriving citizens of their constitutional rights. Here, Defendant is not a state actor that is constitutionally required to ensure it does not deprive citizens of their constitutional rights.

Plaintiff's second claimed irreparable harm, loss of goodwill or damage to reputation, is quite simply meritless given the acknowledged severe damage to Plaintiffs' reputations that has already occurred over the last several years – long before the release of the Film as a result of the publication of the Panama Papers. (Compl. ¶¶ 37-40.) Plaintiffs' cited cases, in addition to being non-binding cases from the Fourth and Eighth Circuits, respectively, stand for the unremarkable proposition that damage to reputation may support a finding of irreparable harm. They have no bearing on Plaintiffs' particular problem, namely, that their reputations and goodwill have already been so damaged that they have already lost all of their clients and were forced to close their business well over a year before the release of the Film. (Pl. Br. at 14; Compl. ¶ 40.) *See Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 552 (4th Cir. 1994) (involving a dispute between two competing cable companies, but the plaintiff had suffered no independent reputational damage apart from the alleged conduct of the defendant); *Planned Parenthood of Minnesota, Inc. v. Citizens for Community Action*, 558 F.2d 861, 867 (8th Cir. 1977) (finding Planned Parenthood's business – which had suffered no reputational damage – would be imperiled by the prospect of having to interrupt its service; here, Plaintiffs' business has already

been interrupted). Furthermore, Plaintiffs offer no evidence that their clients are the likely consumers of Defendant's Film.

Thus, Plaintiffs fail to demonstrate that they are likely to suffer irreparable harm in the absence of an injunction.

II. PLAINTIFF IS NOT LIKELY TO SUCCEED ON THE MERITS OF ITS CLAIMS

A. Plaintiffs' Requested Preliminary Injunction Is An Unconstitutional Prior Restraint

As a threshold matter that should obviate the need to address likelihood of success on the merits, the requested injunction is an unconstitutional prior restraint on free expression. It seeks to enjoin Netflix's continued showing of its Film, as well as its release to its subscribers on the Netflix platform, before that speech has been adjudicated to be defaming – which it is unlikely to be for the reasons described in Section II.B below. "A prior restraint on expression comes . . . with a heavy presumption against its constitutional validity. Indeed, prior restraints are the most serious and least tolerable infringement on First Amendment rights." *Metropolitan Opera Ass'n, Inc. v. Local 100, Hotel Employees & Rest. Employees Int'l. Union*, 239 F.3d 172, 176 (2d Cir. 2001). "When a prior restraint takes the form of a court-issued injunction, the risk of infringing on speech protected under the First Amendment increases." *Id.* (citation omitted).

Beyond the First Amendment's "heavy presumption" against prior restraints, "courts have long held that equity will not enjoin a libel." *Id.* (citations omitted); *see American Malting Co. v. Keitel*, 209 F. 351, 354 (2d Cir. 1913) ("Equity will not restrain by injunction the threatened publication of a libel, as such, however great the injury to property may be. This is the universal rule in the United States…"). "Thus, because defamation can ordinarily be remedied by damages, injunctions are not appropriate in such actions absent extraordinary circumstances, such as intimidation and coercion." *Miller*, 2018 WL 3574867, at *3. "Indeed, even where extraordinary

circumstances are present, the Second Circuit has suggested that First Amendment principles may nonetheless prohibit granting an injunction." *Id*. (citing *Metropolitan Opera*, 239 F.3d at 177).[7]

Here, no such extraordinary circumstances are present, and the established rule against prior restraints on speech bars Plaintiffs' requested temporary restraining order and preliminary injunction. Plaintiffs urge the Court that the potential for the Film to result in "unnecessary and unwanted legal attention" (Compl., p. 5) justifies undermining Defendant's First Amendment protections. Not so. First, the Film does not attempt to intimidate or coerce Plaintiffs. *Miller*, 2018 WL 3574867, at *2. Thus, there are no extraordinary circumstances here – just an ordinary defamation action, which Second Circuit precedent firmly establishes does not warrant the issuance of an injunction. *See, e.g., United States v. Quattrone*, 402 F.3d 304, 309-12 (2d Cir. 2005) (Sotomayor, J.) (overruling district court's order barring publication of juror's names to ensure a fair trial, stating the order was a prior restraint and an infringement on the press' freedom to publish information).

Second, even if potential adverse legal ramifications were somehow qualified as extraordinary circumstances justifying departure from the established rule, as already explained, here the harm Plaintiffs allege is speculative at best. They have already admitted that they, or offshore corporations they created, were in fact involved in criminal conduct, and that in fact they are already being prosecuted for such conduct. Notwithstanding Plaintiffs' protestations to the contrary, there is no reason to believe that this Film will necessarily result in any additional

[7] Plaintiffs cite one case, *Bingham v. Straude*, 184 A.D.2d 85 (1st Dep't 1992), for the proposition that where all the elements for preliminary injunctive relief were demonstrated, injunctive relief based upon a claim of libel was appropriate. However, Bingham is distinguishable on its facts. It did not involve a media defendant or an artistic or expressive work. Rather, plaintiff was being maligned and harassed by his ex-lover, who was sending communications to his family and friends alleging sexual misconduct, among other things. Beyond her harassing conduct, the defendant seemed unstable, lacked credibility in the defamatory comments she made about plaintiff, and regularly contradicted herself in her own filings, including by claiming she had born plaintiff's child and then denying that she ever made that allegation. Thus, this case is an outlier, manifestly different from the one before the Court, which does not undermine the legitimacy of the general rule against prior restraints in libel cases.

prosecutions or investigations, or that all potential jurors in New York will be compromised. The Ninth Circuit addressed this precise issue in *Hunt v. National Broad. Co.*, 872 F.2d 289, 296 (9th Cir. 1989). There, the court affirmed the denial of a TRO and preliminary injunction against NBC's scheduled broadcast of docudrama "Billionaire Boys Club" concerning plaintiff's planning and commission of a murder. The plaintiff alleged that the airing of the docudrama would impede his right to a fair trial. The Ninth Circuit pointed out that the controlling Supreme Court precedent, established in *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 562 (1976), sets out an exacting standard, under which a prior restraint is permitted "only if its absence would prevent securing twelve jurors who could, with proper judicial protection, render a verdict based only on the evidence admitted during trial." *Hunt*, 872 F.2d at 295 (citation omitted). The Ninth Circuit found that plaintiff failed to make the necessary showing, including because he had not demonstrated that alternatives to prior restraint, such as voir dire, jury instructions, or change of venue, would not suffice to protect his rights. *Id.* at 295-96. Finally, because the docudrama had already aired, the proposed prior restraint would not effectively protect his rights: "NBC's docudrama aside, substantial and unrestrained publicity concerning Hunt and the Billionaire Boys Club has already been exposed to the public." *Id.* at 296. The same analysis applies here, and Plaintiffs' arguments in favor of a TRO and preliminary injunction should be similarly rejected.

Finally, and significantly, *The Laundromat* – which uses a palpably comedic, at times farcical, entertainment vehicle to expose an immoral financial system – does not portray Plaintiffs as direct participants in murders, drug-dealing, and other criminal activity. In fact, it portrays Plaintiffs (in a patently caricaturish, non-factual manner) as being largely oblivious to the ways in which some of the shell entities they have set up are being abused, and it indicts the system for making such enterprises largely, if not entirely, *legal*. Ferber Decl., Ex. A. Therefore, the

speculative and uncertain harm to Plaintiffs alleged in the Complaint cannot justify the certain interference with Defendant's First Amendment rights and its ability to participate in the public discourse on this important matter of public concern.

B. Plaintiffs Are Unlikely To Succeed On The Merits Of Their Defamation Claims

Under Connecticut law, to prove defamation, Plaintiffs must demonstrate that: "(1) a defamatory statement was made by the defendant; (2) the defamatory statement [of fact] identifies the plaintiff to a reasonable reader; (3) the defamatory statement is published to a third person; and (4) the plaintiff's reputation suffers injury." *Zupnik v. Associated Press, Inc.*, 31 F. Supp. 2d 70, 72 (D. Conn. 1998) (citation omitted); *Gifford v. Taunton Press, Inc.*, No. DBSCV186028897S, 2019 WL 3526461, at *12 (Conn. Super. Ct. July 11, 2019).

Plaintiffs' defamation claim fails for three independent reasons: (1) the Film is not a false publication of fact concerning Plaintiffs; (2) the injury to Plaintiffs' reputation has already occurred due to the frenzy of media attention surrounding the 2016 publication of the Panama Papers, and no further injury will result from Defendant's Film; and (3) Plaintiffs are public figures who may recover for injury to reputation only upon clear and convincing proof that the defamatory falsehood was made with actual malice, which Plaintiffs cannot do.

1. The Film Is Not A False Publication Of Fact Concerning Plaintiffs

Plaintiffs' defamation claim fails because the Film is not a false publication of fact concerning Plaintiffs. First, to the extent that the Film portrays Plaintiffs as characters engaged in activity that enables criminal activity – which is not the central point of the Film, as explained above – it meets the substantial truth standard set forth under the Second Circuit's defamation law. *See Chau v. Lewis*, 771 F.3d 118, 129 (2d Cir. 2014) (finding that a statement need not be *completely* true, but can be *substantially* true, as when the overall gist or substance of the

challenged statement is true); *Georgetti v. Nexstar Media Grp., Inc*., No. NNHCV186087491S, 2019 Conn. Super. LEXIS 2280, at *13 (Conn. Super. Ct. Aug. 15, 2019) ("Contrary to the common-law rule that required the defendant to establish the literal truth of the precise statement made, the modern rule is that only substantial truth need be shown to constitute the justification.").

Here, Plaintiffs have admitted that offshore companies created by their firm were implicated in criminal activity, including money laundering, tax evasion, bribery, and fraud. (Compl., ¶¶ 32, 48.) The fact that dialogue or some subplots of the storyline of *The Laundromat* were fictionalized does not change the substantial truth of the Film's narrative.

2. The Injury to Plaintiffs' Reputation Has Already Occurred

A necessary element of pleading and proving a defamation claim is that Plaintiffs' reputation suffers an injury as a result of the allegedly defamatory statement. *See Zupnik*, 31 F. Supp. 2d at 72. Here, as Plaintiffs themselves acknowledge, their reputations have already been "severely damaged," ultimately resulting in the loss of their "entire client base" and the closure of the firm. (Compl., ¶¶ 37-40.) In other words, "[Plaintiffs'] reputation with respect to [this] specific subject [is] so badly tarnished that [they] cannot be further injured by allegedly false statements on [this] subject." *Guccione*, 800 F.2d at 303 (citation omitted); *see Cardillo v. Doubleday & Co*., 518 F.2d 638, 639 (2d Cir. 1975). Thus, Plaintiffs cannot make out a prima facie case of defamation.

3. Plaintiffs Are Public Figures But Cannot Prove Actual Malice

As noted above, under Connecticut defamation law, "[t]hose who are public figures . . . may recover for injury to reputation only on clear and convincing proof that the defamatory falsehood was made with such actual malice." *Zupnik*, 31 F. Supp. 2d at 72 (citations & quotations omitted).

a. Plaintiffs Are Public Figures

Those who play central roles in crimes or scandals are often found to be public figures for the purposes of reporting and narratives concerning those incidents. In *Zupnik*, for instance, the court concluded the plaintiff, the wife of a doctor who had become notorious as a result of numerous allegations of criminal conduct and professional negligence, was "thrust into the role of a public figure by virtue of her marriage to Dr. Zupnik." *Id.*; *see Meeropol v. Nizer*, 560 F.2d 1061, 1066 (2d Cir. 1977), *cert. denied*, 434 U.S. 1013 (1978) ("In the course of extensive public debate revolving about the Rosenberg Trial [their children] were cast into the limelight and became public figures under the [Supreme Court's] *Gertz* standards."); *Dameron v. Washington Magazine, Inc.*, 779 F.2d 736, 741 (D.C. Cir. 1985) (Air Traffic Controller who was an ordinary citizen became an involuntary public figure in relation to discussions of the air crash that took place while he was on duty); *Fuller v. Day Pub. Co.*, No. 030565104, 2004 WL 424505, at *5 (Conn. Super. Ct. Feb. 23, 2004), *aff'd*, 872 A.2d 925 (Conn. App. Ct. 2005) (finding plaintiff was a limited purpose public figure where she "voluntarily injected herself into the limelight by committing a crime," and "invited public comment relating to her involvement in a high profile criminal case. . .").

As in *Zupnik*, here Plaintiffs, too, have become public figures due to their central role in an extensive public debate following the release of the "Panama Papers" and the system of shell corporations, tax evasion, and corruption which was thereby revealed. According to the Complaint, Plaintiffs already were well-known worldwide as a result of their work in the offshore industry. (Compl., ¶¶ 18-19.) Following the publication of the "Panama Papers," they further involved themselves in the public debate concerning that topic by, amongst other things, giving interviews to national news outlets, including CNBC and the Wall Street Journal, and even

speaking to the author of the book on which the movie was based.[8] (Ferber Decl., ¶ 6 & Exs. D-F; Compl. ¶ 53.) Thus, Plaintiffs have "voluntarily inject[ed] [themselves] or [been] drawn into a particular public controversy and thereby become[] . . . public figure[s] for a limited range of issues." *Fuller*, 2004 WL 424505, at *5.

In defense of their claim not to be public figures, Plaintiffs cite *Wolston v. Reader's Digest Ass'n, Inc.*, 443 U.S. 157, 168 (1979), which found that the nephew of accused Soviet spies who refused to appear for grand jury testimony was not a public figure in connection with that controversy. *Wolston* is distinguishable on its facts. First, the plaintiff there was tangential to the actual controversy, which involved his aunt and uncle, unlike the Plaintiffs here, who are undeniably at the center of the web of offshore tax shelters that are central to the story. Second, in *Wolston*, the Court emphasized that the plaintiff was a private individual who occupied a position of "relative obscurity." *Id.* at 165. Here, in contrast, Plaintiffs allege that they had significant reputations prior to the release of the Panama Papers, and after their release, they continued to insert themselves into the public controversy, including by granting interviews to major news outlets, such as CNBC and the Wall Street Journal, and speaking with Mr. Bernstein concerning the Book. (Ferber Decl., ¶ 6 & Exs. D-F; Compl., ¶ 53.)

b. Plaintiffs Have Not Sufficiently Alleged And Cannot Prove Actual Malice

Therefore, to support their defamation claim, Plaintiffs are required to prove that Defendant acted with actual malice in making the allegedly defamatory statements in the Film, meaning that they acted with actual knowledge of the falsity of the statements or with reckless disregard as to their truth. *Biro v. Conde Nast*, 963 F. Supp. 2d 255, 276 (S.D.N.Y. 2013), *aff'd*, 877 F.3d 541

[8] Jurgen Mossack gave interviews to CNBC and the Wall Street Journal in April 2016, and Ramon Fonseca gave an interview to journalists, excerpts of which were subsequently published in Reuters and Associated Press Articles. (Ferber Decl., ¶ 6 & Exs. D-F.)

(2d Cir. 2015), *aff'd*, 622 F. App'x 67 (2d Cir. 2015); *Gifford*, 2019 WL 3526461, at *12. Actual malice is "a difficult standard to meet, and quite purposefully so," given the importance of the free expression right at stake. *Biro,* 963 F. Supp. at 277. Furthermore, "not only is proving actual malice a heavy burden, but, in the era of *Iqbal* and *Twombly*, pleading actual malice is a more onerous task as well." *Id.* at 278. Following the Supreme Court's decision in *Iqbal*, where a particular state of mind is a necessary element of a claim, the pleading of that state of mind must be plausible and supported by factual allegations, not mere conclusory recitations of the legal standard. *See id*. at 278. This is especially warranted in the context of defamation cases given the difficulty of proving actual malice and the fact that actual malice must be proven by clear and convincing evidence in order for the plaintiff to succeed. *Id.*

Here, there are no allegations in the Complaint that sufficiently plead actual malice. Instead, Plaintiffs do no more than recite the bare legal standard of actual malice, hoping the Court will overlook their failure to properly plead their claim. (*See, e.g.*, Compl., ¶¶ 122-23.) In fact, the Complaint actually underscores the fact that Defendant did not act with the requisite disregard for truth required by a defamation cause of action. For instance, Plaintiffs allege that Netflix based the film on Mr. Bernstein's book (Compl., ¶¶ 61-62), the credibility of which Netflix would have no reason to doubt, particularly given that Plaintiffs never asserted defamation claims based on the book in the nearly two years since it was published. *Davis v. Costa-Gavras*, 654 F. Supp. 653, 657 (S.D.N.Y. 1987) (finding no actual malice where maker of docudrama relied on book in creation of film).

Furthermore, it is well-established that fictionalized films, like *The Laundromat*, partake in literary license, including "simulated dialogue, composite characters, and a telescoping of events occurring over a period into a composite scene or scenes." *Davis*, 654 F. Supp. at 658. The use

of such conventions is "singularly appropriate and unexceptionable," and if the "alterations of fact in scenes portrayed are not made with serious doubts of truth of the essence [of the scene portrayed], such scenes do not ground a charge of actual malice." *Id.*[9]

Moreover, as in other factually-inspired films approved by courts in the Second Circuit, *The Laundromat* repeatedly makes clear that it is a fictionalization, with the facetious statement that it is "*based* on actual secrets," or as the trailer says, "Based on Some Real Shit," but that it is not intended to be taken as a factual representation. (Ferber Decl., Ex. B.) *Davis*, 654 F. Supp. at 657. Such expressive works are a vital and persuasive means of entering into public discourse about a matter of political and historical importance.[10] However, modern audiences understand the nature of such film and are well aware that what they see on the screen is not the literal truth or a literal reenactment of events as they happened. Indeed, the Supreme Court has recognized the different expectations of historical accuracy an audience will have when confronted with a dramatic presentation as opposed to a news article. *See Masson*, 501 U.S. at 513 ("[A]n acknowledgement that the work is a so-called docudrama or historical fiction . . . might indicate that the quotations should not be interpreted as the actual statements of the speaker to whom they are attributed."). As the California Court of Appeal recently explained in dismissing actress Olivia De Havilland's defamation suit against the makers of the docudrama *Feud*,

> When the expressive work at issue is fiction, or a combination of fact and fiction, the "actual malice" analysis takes on a further wrinkle. De Havilland argues that, because she did not grant an interview at the 1978 Academy Awards or make the "bitch sister" or "Sinatra drank the alcohol" remarks to Bette Davis, Feud's creators acted with actual malice. But fiction is by definition untrue.

[9] This reasoning applies with greater force to the Film, which, unlike the serious dramatic motion picture at issue in *Davis*, is an obviously comedic, and at times even farcical, presentation.

[10] *See Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 501 (1952) (recognizing that "[t]he importance of motion pictures as an organ of public opinion is not lessened by the fact that they are designed to entertain as well as to inform."); *Schad v. Borough of Mt. Ephraim*, 452 U.S. 61, 65 (1981) ("Entertainment, as well as political and ideological speech, is protected; motion pictures, programs broadcast by radio and television, and live entertainment, such as musical and dramatic works, fall within the First Amendment guarantee.") (citations omitted).

> It is imagined, made-up. Put more starkly, it is false. Publishing a fictitious work about a real person cannot mean the author, by virtue of writing the fiction, has acted with actual malice.

De Havilland v. FX Networks, LLC, 21 Cal. App. 5th 845, 869 (Cal. App. 2018), *review denied*, No. S2448614, 2018 Cal. LEXIS 5034 (Cal. July 11, 2018), *cert. denied*, 139 S. Ct. 800 (2019) (dismissing defamation action, awarding defendants their fees and costs). This analysis likewise applies to Plaintiffs' claim of libel based upon so-called innuendo and implication, which in fact, is simply a more tenuous and less sustainable version of a libel claim. (Pl. Br. at 18.) For the foregoing reasons, Plaintiffs are not likely to succeed on their defamation claims.

C. Plaintiffs Are Unlikely To Succeed On The Merits Of Their False Light Privacy Claim

Under Connecticut law,[11] to establish invasion of privacy by false light, the plaintiff must show "(a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed." *Miles v. City of Hartford*, 719 F. Supp. 2d 207, 216 (D. Conn. 2010), *aff'd*, 445 F. App'x 379 (2d Cir. 2011) (dismissing false light privacy claim because plaintiff could not show the statement at issue was false) (citations omitted). As with defamation, "the right of privacy must give way when balanced against the publication of matters of public interest, in order to insure the uninhibited robust and wide-open discussion of legitimate public issues." *Jensen v. Times Mirror Co.*, 634 F. Supp. 304, 310 (D. Conn. 1986) (citations & quotations omitted). Thus, it is "largely the same analyses" as was made above with respect to the defamation claim, and for the same reasons must fail. *Id.* at 310.

[11] As explained in Defendant's motion to dismiss or, in the alternative, to transfer venue, neither Plaintiffs nor the making or marketing of the Film concern Connecticut, so it is unclear that Connecticut law would apply, and the controlling law may not recognize a false light claim.

First, Plaintiffs were already very much in the public eye, for the same reasons that they are portrayed in the Film, prior to the release of the Film. Therefore, their allegation that Defendant has unreasonably placed them in a false light before the public is simply untenable. Second, under the First Amendment, "a media defendant can be liable for a false light invasion of privacy only where it publishes highly offensive material without regard to its falsity, and to the false impression relayed to the public." *Goodrich v. Waterbury Republican-American, Inc*., 188 Conn. 107, 132 (1982). "As long as the matter published is substantially true, the defendant was constitutionally protected from liability for a false light invasion of privacy . . ." *Id.* As explained in detail above, Defendants' Film is a largely comedic morality tale, not a newspaper report. Moreover, the gist of the Film – that offshore shell corporations are abused by the powerful and wealthy, including criminals – is substantially true, which provides a complete defense to Plaintiffs' false light claim. Therefore, for the reasons more fully set forth in Section II.B, Plaintiffs' false light claim must fail.

D. Plaintiffs' Claims Fail Under Connecticut's Anti-SLAPP Statute

Connecticut's Anti-SLAPP law, Section 52-196a, permits a defendant to dismiss a lawsuit brought against it if the suit is "'based on the defendant's exercise of its right to free speech,' . . . under the state or federal constitutions 'in connection with a matter of public concern.'" *Cronin v. Pelletier*, No. CV186014395S, 2018 WL 3965004, at *1 (Conn. Super. Ct. July 26, 2018) (quoting statute) (dismissing plaintiff's libel per se claim). The statute defines "right of free speech" as "communicating, or conduct furthering communication, in a public forum on a matter of public concern." Conn. Gen. Stat. § 52-196a(a)(2) (West). The statute in turn defines "matter of public concern," in pertinent part, to include "an issue related to . . . (B) . . . economic or community well-being, (C) the government, . . . and other regulatory matters, (D) a . . .public

figure, or (E) an audiovisual work." *Id*., § 52-196a(a)(1). Here, Defendant's Film is an audiovisual work disseminated publicly that concerns a matter of great public concern, namely, the U.S. regulatory system, which permits the creation of offshore shell companies as tax havens to protect the ultra-rich.[12] Thus, Defendant has met its initial burden of showing, by a preponderance of the evidence, that Plaintiffs' Complaint is based on Defendant's exercise of its right of free speech in connection with a matter of public concern. Therefore, the court "shall grant a special motion to dismiss" unless Plaintiffs are able to "set forth with particularity the circumstances giving rise to the Complaint . . . and demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint." Section 52-196a(e)(3). This it cannot do for the reasons outlined in Sections II.A-C above. *See Georgetti*, 2019 Conn. Super. LEXIS 2280, at *1 (granting motion to dismiss police officer's complaint alleging defendants defamed him in a news report stating that he had been accused of sexual misconduct and had been suspended without pay under Connecticut Anti-SLAPP statute, finding that plaintiff could not prove actual malice as a matter of law).

E. Plaintiffs Are Unlikely To Succeed On The Merits Of Their Trademark Dilution Claim

1. Plaintiffs Cannot Prove Their Mark Is "Famous" For Dilution Purposes

Under the Lanham Act, only famous marks are eligible for protection against dilution by blurring or by tarnishment (Plaintiffs allege the latter).[13] 15 U.S.C. § 1125(c)(1). In order to be "famous," a mark must be "*widely recognized by the general consuming public of the United*

[12] That this subject status is a matter of public concern is beyond dispute given the extensive international media attention that followed the publication of the Panama Papers.

[13] Plaintiffs confusingly assert that viewers will assume Plaintiffs endorse or approve of the logo's use. (Plaintiffs' Br. at 6.) That is not an element of a dilution claim (it is an element of an infringement claim, which Plaintiffs have not pled). In any event, given the parodic nature of and critical commentary contained in the Film, it is inconceivable that viewers would assume Plaintiffs approved of or endorsed the Film.

States" as a designation indicating a single source of goods or services. *Id.* at § 1125(c)(2)(A) (emphasis added). It is a difficult and demanding requirement, and one that Plaintiffs' mark MOSSACK FONSECA mark and logo unquestionably does not meet. *See, e.g., Coach Services, Inc. v. Triumph Learning LLC*, 668 F.3d 1356 (Fed. Cir. 2012) (finding evidence did not prove COACH was a "famous" mark for dilution purposes). A number of courts, including the Second Circuit, have said that to qualify as "famous" for purposes of dilution, the mark must be a "household name" – "a name immediately familiar to very nearly everyone, everywhere in the nation." 4 *McCarthy on Trademarks and Unfair Competition*, § 24:104 (5th 3d. 2019); *Schutte Bagclosures, Inc. v. Kwik Lok Corp.*, 193 F. Supp. 3d 245, 283 (S.D.N.Y. 2016), *aff'd*, 699 F. App'x 93 (2d Cir. 2017) ("Only trademarks that enjoy such broad renown so as to at least approach (if not attain) the status of 'household names' may qualify as famous marks under federal law."). Thus, "'niche fame' among a specific marketplace or group of consumers is insufficient . . ." *Id.* (citation omitted).

Here, Plaintiffs have at best alleged only niche fame, claiming that its "logos were widely recognized by consumers *in Plaintiffs' industry* and became famous well prior to Netflix's unlawful use of the logo." (Compl., ¶ 131 (emphasis added).) Thus, by Plaintiffs' own admission, their mark and logo is not sufficiently famous to merit protection under Section 43(c) of the Lanham Act.

Plaintiffs assert in their Brief that because Colombia, where the MOSSACK FONSECA mark is registered, is a member of the international treaty, the General Inter-American Convention for Trade Mark and Commercial Protection, it is not required to prove fame in order to bring a dilution claim. However, they cite no provision of the treaty in support of this remarkable claim, nor do they cite a single case. Therefore, this argument is unsupportable.

2. Plaintiffs' Dilution Claim Fails Because Plaintiffs' Mark Is Already Tarnished

In addition to its lack of fame, as admitted throughout the Complaint, Plaintiffs' logo and the goodwill that it represents have already been so thoroughly tarnished that its portrayal in *The Laundromat* – in connection with the same subject matter that has already made headlines throughout the United States – cannot possibly sustain a cause of action for tarnishment. For instance, as the Complaint acknowledges, "[i]mmediately after initial news reports of hack revelations, and the rumors concerning [Plaintiffs'] alleged clients, banks and other third parties refused to do business with [Plaintiffs' firms]." (*Id.*, ¶ 38.) As a consequence of the "severe[] damage[]" caused to Plaintiffs' firms' reputation (*id.*, ¶ 37), it ultimately was forced to close its offices and lost its entire client base. (*Id.*, ¶ 40.) As Plaintiffs admit, they have already "suffered damage to the goodwill and value their business as a result of the "hack and release" of the Panama Papers. (*Id.*, ¶ 43.)

3. Defendants' Work Falls Within The Noncommercial Use Exception To The Dilution Statute

Finally, as an artistic work, *The Laundromat* falls within the "noncommercial use" liability exemption to dilution protection under Section 43(c) of the Lanham Act because it presents a farcical view of the conduct exposed in the "Panama Papers," intended to provide a critical commentary on the use of offshore companies to provide tax shelters for the wealthy. *Smith v. Wal-Mart Stores, Inc.*, 537 F. Supp. 2d 1302 (N.D. Ga. 2008) (citing *Mattel v. Walking Mountain Prods*, 353 F.3d 792, 812 (9th Cir. 2003) ("[T]arnishment caused by an . . . artistic parody which satirizes [the complainant's] . . . image is not actionable under an anti-dilution statute because of the free speech protections of the First Amendment.")).

F. Plaintiffs Are Unlikely To Succeed On The Merits Of Their Trademark Claims Under the *Rogers* Rule

Artistic expression, such as Defendant's film, is constitutionally protected speech. The application of the First Amendment's protections to motion pictures and other works of entertainment has been established since the Supreme Court's decision in *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952), in which the Court recognized that "[t]he importance of motion pictures as an organ of public opinion is not lessened by the fact that they are designed to entertain as well as to inform." *Id.* at 501; *see also Schad v. Borough of Mt. Ephraim*, 452 U.S. 61, 65 (1981) ("Entertainment, as well as political and ideological speech, is protected; motion pictures, programs broadcast by radio and television, and live entertainment, such as musical and dramatic works, fall within the First Amendment guarantee.") (citations omitted).

The conflict between Lanham Act claims and First Amendment protection for artistic works was addressed in the seminal case of *Rogers v. Grimaldi*, 695 F. Supp. 112 (S.D.N.Y. 1988), *aff'd*, 875 F.2d 994 (2d Cir. 1989), which held that the First Amendment precludes Lanham Act claims premised upon the title of an expressive work unless the title "has *no* artistic relevance to the underlying work whatsoever, or, if it has some artistic relevance, unless [it] *explicitly* misleads as to the source or the content of the work." *Id.* at 999 (emphasis added). The *Rogers* test has been widely adopted and extended to use of both names and trademarks in the *content* of expressive works, as well as their titles, leading to such claims regularly being dismissed as a matter of law. *See, e.g., Louis Vuitton Mallatier S.A. v. Warner Bros. Entm't Inc.*, 868 F. Supp. 2d 172, 177 n.9 (S.D.N.Y. 2012) (use of trademark in context of film); *Mattel, Inc. v. MCA Records*, 296 F.3d 894, 902 (9th Cir. 2002) (use of trademark in title and content of song); *ETW Corp. v. Jireh Publ'g, Inc.*, 332 F.3d 915, 928 (6th Cir. 2003) (use of name and trademark in marketing materials for

prints of painting); *Sugar Busters LLC v. Brennan*, 177 F.3d 258, 269 n.7 (5th Cir. 1999) (use of trademark in book title).

Courts have found that the threshold for finding that the trademark at issue has artistic relevance to the underlying work is "appropriately low." *Rogers*, 875 F.2d at 999; *see Louis Vuitton*, 868 F. Supp. 2d at 178 ("The threshold for artistic relevance is purposely low and will be satisfied unless the use has *no* artistic relevance to the underlying work *whatsoever*") (citations & quotations omitted) (emphasis in the original); *E.S.S. Entm't 2000, Inc. v. Rock Star Videos, Inc.*, 547 F.3d 1095, 1100 (9th Cir. 2008) (finding that "the level of relevance merely must be above zero" to "merit First Amendment protection").

Here, Defendant more than meets that "appropriately low" threshold. The Laundromat employs the names of Plaintiffs, along with the names of their law firms, and the logo of MOSSACK FONSECA, all in the course of telling the fictionalized story of how these two lawyers found and exploited loopholes to help wealthy individuals and companies avoid taxation and other liabilities, largely through the creation of shell companies located offshore. Because these men, their companies, identified by the MOSSACK FONSECA logo, all feature in the real life events on which the Film is based, their use is artistically relevant to the work. *See E.S.S. Entertainment 2000 Inc.*, 547 F.3d at 1095, 1098, 1100 (finding that video game creator's use of "Pig Pen," a virtual, cartoon-style strip club similar in look at feel to trademark owner's Los Angeles strip club, was protected by the First Amendment from trademark and trade dress infringement claims; the court found artistic relevance because the creator sought to create a "cartoon-style parody of East Los Angeles," and "a reasonable way to do that is to recreate a critical mass of the businesses and buildings that constitute it"); *Dillinger, LLC v. Electronic Arts, Inc.*, No. 1:09-cv-1236-JMS-DKL, 2011 U.S. Dist. LEXIS 64006, at *14 (S.D. Ind. June 16, 2011) (finding the name "Dillinger" in

reference to a Tommy Gun was artistically relevant to the defendants' The Godfather video game because "the gentleman-bandit, commonly known for his public persona as a flashy gangster who dressed well, womanized, drove around in fast cars, and sprayed Tommy Guns, has above-zero relevance to a game whose premise enables players to act like members of the mafia and spray Tommy Guns.") (citation & quotations omitted). Thus, Plaintiffs' Lanham Act claims will fail.

III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST TIP DECIDELY IN DEFENDANT'S FAVOR

As noted above, Plaintiff points only to harm that has already occurred or speculative and conclusory assertions of potential harm should the Court deny its motion. As demonstrated in the accompanying Declaration of Christian Davin, defendant Netflix's Marketing Vice President for Films, however, the harm to Netflix should an injunction be granted is both guaranteed and substantial. An injunction to prematurely halt the completion of the theatrical distribution of *Laundromat* would result in substantial lost revenue from ticket sales, lost investment in advertising and promotion of the Film, and lost investment in securing theater space. (Davin Decl., ¶ 5-7.) It would also prevent the imminent distribution of the Film on Netflix, which has been advertised for more than six weeks, resulting in harm to the company's relationship with its subscribers, many of whom eagerly anticipate the Film's streaming release. (*Id.*, ¶ 7.)

Furthermore, Defendant could not realize the same revenues from these forms of distribution in a subsequent year, because the advertising and promotion which was done for the Film in connection with its Fall release will have all but disappeared from the public consciousness by then. (*Id.*, ¶ 7.) Thus, weighing the speculative or non-unique harm to the Plaintiffs against the "significant but unmeasurable economic injury" to Netflix, the balance of hardships decidedly favors Defendant. *Marcy*, 6 F. Supp. 2d at 283; *see J.R. O'Dwyer Co. v. Media Mktg. Int'l, Inc.*, 755 F. Supp. 599, 606-07 (S.D.N.Y. 1991) (balance of hardships in favor of defendants, where

plaintiff offered only "conclusory assertion" of damage to revenues or reputation, and where defendants' allegedly infringing public relations directory had already had substantial distribution, so that "the vast majority of whatever harm its publication [would] visit on [plaintiff] has occurred already"); *see also Twentieth Century Fox Film Corp. v. Marvel Enters., Inc.*, 277 F.3d 253, 258 (2d Cir. 2002) (holding that "the equities weigh against halting a TV series now being aired because of alleged injury to a film sequel that is, at best, in the planning stage").

Likewise, the public interest weighs in favor of Defendant and against enjoining *The Laundromat*. As explained above, Plaintiffs' claim of damage either have already occurred, such that an injunction would not spare them harm, or they are remote and speculative. In contrast, an injunction would impair Defendant's First Amendment rights and impede public discourse on a matter of great public concern, namely systemic corruption and global inequality. *See Salinger v. Colting*, 607 F.3d 68, 82 (2d Cir. 2010) ("The public's interest in free expression . . . is significant and is distinct from the parties' speech interests. By protecting those who wish to enter the marketplace of ideas . . . , the First Amendment protects the public's interest in receiving information. Every injunction issued before a final adjudication on the merits risks enjoining speech protected by the First Amendment.") (citations & quotations omitted).

IV. PLAINTIFF'S BOND WOULD HAVE TO BE AT LEAST $1 MILLION

Rule 65(c) requires the posting of a proper bond by Plaintiff "for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." *See, e.g., Nintendo of Am., Inc. v. Lewis Galoob Toys, Inc.*¸16 F.3d 1032, 1037-39 (9th Cir. 1994) (holding that defendant who was wrongfully enjoined was entitled to recover full amount of $15 million bond). The failure to require a bond is reversible error. *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 421 (4th Cir. 1999). While Defendants submit

that Plaintiff's motion is marked by a singular failure to satisfy the requirements for preliminary injunctive relief, should the Court grant the motion, a bond in the amount of at least $1 million should be required, in accordance with the facts set forth in the accompanying Davin Declaration.

CONCLUSION

For the foregoing reasons, Defendant Netflix, Inc. respectfully submits that the Court should deny Plaintiff's motion for a temporary restraining order and preliminary injunction in all respects.

Dated: New York, New York
October 17, 2019

COWDERY & MURPHY, LLC

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CERTIFICATION

I hereby certify a copy of the foregoing was filed electronically on October 17, 2019. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

By: //s// James J. Healy (ct28447)
James J. Healy

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MOSSACK FONSECA & CO., S.A., BUFETE MF & CO., JURGEN MOSSACK and RAMON FONSECA Plaintiffs, v. NETFLIX INC. Defendant.	CIVIL ACTION NO. 3:19-cv-01618 OCTOBER 16, 2019

DECLARATION OF KATE CHILTON IN SUPPORT OF DEFENDANT NETFLIX, INC.'S OPPOSITION TO THE MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

1. I am Director, Content Litigation, for Netflix, Inc. ("Netflix"), the Defendant in this action. I submit this declaration in support of Defendant's opposition to Plaintiffs Mossack Fonseca & Co., S.A., Bufete MF & Co., Jurgen Mossack, and Ramon Fonseca's (collectively, "Plaintiffs") motion to preliminarily enjoin further distribution and release of Defendant's motion picture, *The Laundromat* (the "Film").

2. The first notice that we received from Plaintiffs of their objection to the Film was an email sent by their counsel, Stephen Seeger, Esq., late in the afternoon on Friday, October 11, 2019. A true and correct copy of that email is attached hereto as Exhibit A. Mr. Seeger's email attached a draft Complaint, which was virtually identical to the Complaint filed on October 15, 2019, except that it was dated October 4, 2019 next to the caption.

3. The Film was first released in theaters on September 27, 2019. It has been or is scheduled to be exhibited in theaters in New York, California, Massachusetts, Illinois, Texas,

Florida, Pennsylvania, Oregon, Washington, DC, Maryland, Vermont, Iowa, Virginia, Nebraska, Missouri, New Hampshire, as well as Venice, Italy, and several cities in Canada.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 16, 2019.

KATE CHILTON

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MOSSACK FONSECA & CO., S.A., BUFETE MF & CO., JURGEN MOSSACK and RAMON FONSECA	:	
Plaintiffs,	:	CIVIL ACTION NO. 3:19-cv-01618
v.	:	
NETFLIX INC.	:	
Defendant.	:	
	:	OCTOBER 16, 2019

DECLARATION OF CHRISTIAN DAVIN IN SUPPORT OF DEFENDANT NETFLIX, INC.'S OPPOSITION TO THE MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

CHRISTIAN DAVIN declares as follows:

1. I am the Marketing Vice President for Films of Netflix, Inc., the Defendant in this action. I submit this declaration in support of Defendant's opposition to Plaintiffs Mossack Fonseca & Co., S.A., Bufete MF & Co., Jurgen Mossack, and Ramon Fonseca's (collectively, "Plaintiffs") motion to preliminarily enjoin further distribution and release of Defendant's motion picture, *The Laundromat*. The matters set forth below are based either on my own knowledge or on information derived from Netflix records.

2. *The Laundromat* was first screened on September 1, 2019 at the Venice Film Festival. The film was subsequently exhibited on September 9, 2019 at the Toronto Film Festival, and then was released in select theaters in New York and Los Angeles on September 27, 2019.

3. *The Laundromat* is scheduled to be made available to Netflix's subscribers on Netflix's streaming platform on October 18, 2019.

4. Netflix began advertising *The Laundromat* via print advertisements and trailers on or about August 28, 2019 and has purchased advertising to promote *The Laundromat* through November 2019. Netflix has also paid for outdoor advertising (*e.g.* billboards) for the film beginning on or about September 23, 2019. In addition, Netflix has already planned promotional efforts for *The Laundromat* through the Oscar awards season in February 2020.

5. If the Court were to enjoin exhibition of *The Laundromat* in October 2019, in addition to losing revenues from ticket sales at the theaters that are presently showing and those that are scheduled to show the film, Netflix would lose the value of its advertising spends, including billboards and print advertisements that are already in public and cannot be revised, promoting an October 18, 2019 release for *The Laundromat* on Netflix's streaming platform.

6. If distribution of *The Laundromat* were enjoined while this action is litigated, and it were later determined that it should not have been enjoined, the cost to Netflix would range between $1,000,000 and $20,000,000, depending on the length of the injunction.

7. If the film's release were delayed, Netflix would be required to incur significant additional expenses in new promotion and advertising costs to try to resurrect interest in the film. Based upon my experience in film marketing, a second release campaign could never be expected to reach the level of interest currently built up for the planned streaming release date, which was timed to follow shortly after the film's exhibition at well-known film festivals and its theatrical release. This loss of marketing momentum would cause unquantifiable damage to Netflix, and the loss of revenue would likely be substantial.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 16, 2019.

DocuSigned by:
Christian Davin
139DBA16EDE7400...

CHRISTIAN DAVIN

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MOSSACK FONSECA & CO., S.A., BUFETE MF & CO., JURGEN MOSSACK and RAMON FONSECA	:	
Plaintiffs,	:	CIVIL ACTION NO. 3:19-cv-01618
v.	:	
NETFLIX INC.	:	
Defendant.	:	
	:	OCTOBER 16, 2019

DECLARATION OF TOM J. FERBER IN SUPPORT OF DEFENDANT NETFLIX, INC.'S OPPOSITION TO THE MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

TOM J. FERBER declares as follows:

1. I am a partner in the law firm of Pryor Cashman LLP, counsel for Defendant Netflix, Inc. ("Netflix") in the above-captioned matter. My *pro hac vice* application to appear before this Court is pending.

2. I submit this declaration in support of Defendant's opposition to Plaintiffs Mossack Fonseca & Co., S.A., Bufete MF & Co., Jurgen Mossack, and Ramon Fonseca's (collectively, "Plaintiffs") motion to preliminarily enjoin further distribution and release of Defendant's motion picture, *The Laundromat*.

3. A true and correct copy of *The Laundromat* in DVD format, which is Exhibit A hereto, was sent by Federal Express to the Court on October 16, 2019 for its consideration in connection with Defendant's opposition to Plaintiff's Motion.

4. Submitted herewith as Exhibit B is a true and correct screenshot from *The Laundromat* at the 12 second mark.

5. Submitted herewith as Exhibit C is a true and correct screenshot from *The Laundromat* at the 1 hour, 34 minute, 25 second mark.

6. Below is a link to a April 8, 2016 video interview by Jurgen Mossack that aired on CNBC regarding his business activities and the release of the Panama Papers. https://www.cnbc.com/video/2016/04/08/maybe-we-were-too-trusting-early-on-mossack.html

7. Submitted herewith as Exhibit D is a true and correct copy of an article that appeared on April 7, 2016 in *The Wall Street Journal* recounting an interview provided to the Wall Street Journal by Jurgen Mossack.

8. Submitted herewith as Exhibit E is a true and correct copy of an article that appeared on February 9, 2017 in *Reuters*, including quotes from an interview given to reporters by Ramon Fonseca.

9. Submitted herewith as Exhibit F is a true and correct copy of an Associated Press article that was republished in the *Daily Herald* on February 10, 2017, including quotes from an interview given to reporters by Ramon Fonseca.

10. Submitted herewith as Exhibit G is a true and correct copy of a blogpost entitled "Three Years After Release, Panama Papers Remain Evergreen – Updated," published on the website Global Witness on April 4, 2017 and updated on April 5, 2019.

11. Submitted herewith as Exhibit H is a true and correct copy of an article published on Deadline on October 9, 2018, entitled "Netflix Commits to Panama Papers Drama 'The Laundromat'; David Schwimmer Joins Soderbergh, Oldman, Streep, Banderas."

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 16, 2019.

TOM J. FERBER

EXHIBIT B

THE LAUNDROMAT

BASED ON ACTUAL SECRETS

1:35:48

The Laundromat

EXHIBIT C

52024

MOTION PICTURE ASSOCIATION OF AMERICA

SAG·AFTRA

THIS PICTURE MADE UNDER THE JURISDICTION OF

AFFILIATED WITH A.F.L.-C.I.O.-C.L.C.

While the motion picture is inspired by actual events and persons, certain characters, incidents, locations, dialogue, and names are fictionalized for the purpose of dramatization. As to any such fictionalization, any similarity to the name or to the actual character or history of any person, living or dead, or actual incident is entirely for dramatic purposes and not intended to reflect on any actual character or history.

1:34

The Laundromat

EXHIBIT D

WORLD | LATIN AMERICA

Co-Founder of Mossack Fonseca Defends Law Firm at Center of 'Panama Papers'

Jürgen Mossack says company at center of tax-shelter scrutiny won't change its ways

Offices of the Mossack Fonseca law firm in Panama City's financial district. PHOTO: SUSANA GONZALEZ/BLOOMBERG NEWS

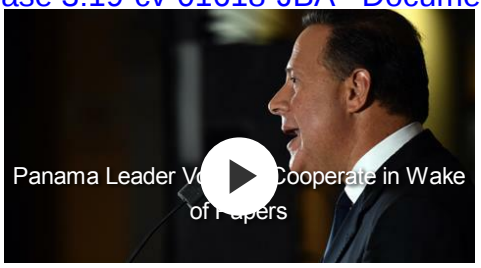
By Kejal Vyas

April 7, 2016 12:49 am ET

PANAMA CITY, Panama—One of the founders of the law firm at the center of the "Panama Papers" leak of secret documents on Wednesday defended his firm, Mossack Fonseca, and said that he expected few changes to his business model despite world-wide scrutiny.

In his first in-depth interview since reports of the leaked documents were published, Jürgen Mossack said his firm did nothing wrong by selling some 240,000 shell companies registered in low- or no-tax territories around the world.

The law firm, he said, works through



Panamanian President Juan Carlos Varela spoke to the press on Wednesday about the "Panama Papers," a leak of documents from Panamanian law firm Mossack Fonseca & Co. (Photo: Getty Images)

Leaked documents from a Panama law firm implicate wealthy and famous individuals world-wide in possible illegal use of offshore accounts. WSJ's Jason Bellini reports. Image: Getty

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intermediaries and can't keep track of how the offshore entities that it sells are used.

"We're not going to stop the services and go plant bananas or something," the 68-year-old Mr. Mossack said. "People do make mistakes. So do we, and so does our compliance department. But that is not the norm."

Mr. Mossack, sitting in an armchair on the second floor of Mossack Fonseca's offices in Panama City's financial district, spoke just days after a group of 400 journalists from dozens of countries simultaneously released stories based on leaked documents from the firm that showed how the company created dummy companies and offshore accounts where the rich and powerful could secretly park their money.

Documents obtained by the group, the International Consortium of Investigative Journalists, showed that the firm's clients included relatives from the high reaches of China's government to associates of Russian President Vladimir Putin to the money man for Syrian dictator Bashar al-Assad.

The trove of 11.5 million individual files were fed to a newspaper in Munich that then shared it with ICIJ. The Wall Street Journal hasn't independently verified the documents.

Panama's president, Juan Carlos Varela, on Wednesday night defended transparency reforms the government enacted last year and said the media storm was casting a negative light on the country.

"The Panama Papers," he said, "are not a problem of our country but of many countries."

Mr. Varela said Panama would form a commission of national and international experts to evaluate the country's regulations governing financial and legal services. Earlier this week, Panama's attorney general said the office would launch an investigation into the company.

Mr. Mossack and the head of legal affairs for his law firm, Sara Montenegro, said in the

hourlong interview that they welcomed further regulations and scrutiny of their business. They noted, however, that they had yet to be contacted directly by local authorities.

"At this point in time I would say there shouldn't be repercussions," Mr. Mossack said, "but I wouldn't say that there won't be any."

Mossack Fonseca's business of selling offshore companies grew exponentially since the firm's founding in 1977. It is mostly a volume game, Mr. Mossack and Ms. Montenegro said, because the cost of registering companies in jurisdictions like the British Virgin Islands and Seychelles is low. Shell companies can be bought for a few hundred U.S. dollars. Law firms also charge another annual fee of around $1,000 to be listed as a registered agent for their client.

The offshore companies, have plenty of legitimate uses, Mr. Mossack said, including avoiding paying double taxes, and providing privacy and protection from rogue regimes and criminals.

Experts on tax havens, though, say that Panama is among the most secretive countries and has held back cooperation with countries pushing for more transparency in the movement of money.

On Wednesday, French Finance Minister Michel Sapin said he asked the Organization for Economic Cooperation and Development to put Panama back on a list of noncooperative tax haven countries, noting that the country has failed to make progress on information exchange since it was taken off that list in 2012. Panamanian authorities promised to fight against the effort.

Mr. Mossack, whose father was a German soldier in World War II and moved to Panama with his family when he was 13, said his company is making some adjustments, reducing its overseas franchises, being more selective with clients and investing in better cybersecurity.

The documents from his company, he said, were stolen by a hacker. Mr. Mossack said it was only in recent weeks that he was notified of the security breach, after clients began receiving calls from journalists involved in the Panama Papers investigation.

Mossack Fonseca said it is improving due diligence practices and has a team of 26 lawyers digging through its files to review clients that have worked with the company for years. Ms. Montenegro said that any irregularity in registration information can lead to a termination of the relationship. She said in recent years they have been letting go of about 80 clients a year with their improved due diligence.

"The only crime that has been proven here is the violation of privacy," said Ms. Montenegro, referring to the hacking.

Mr. Mossack said the intermediary banks that his firm works with—and who represent the final recipients of the shell companies—should have been doing better reviews of their clients.

"Our brand needs to be protected," Mr. Mossack said. "We feel the best way to protect the brand is by doing things ourselves and not rely on others."

—José de Córdoba and Santiago Pérez in Mexico City contributed to this article.

Write to Kejal Vyas at kejal.vyas@wsj.com

Appeared in the April 7, 2016, print edition as 'Founder Defends 'Panama' Firm.'

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EXHIBIT E

REUTERS

WORLD NEWS

FEBRUARY 9, 2017 / 11:27 PM / 3 YEARS AGO

Panama raids Mossack Fonseca over Odebrecht bribery scandal

PANAMA CITY (Reuters) - Panamanian prosecutors raided the offices of Mossack Fonseca, the law firm at the center of the "Panama Papers" scandal, seeking possible links to Brazilian engineering company Odebrecht, the attorney general's office said on Thursday.

A car from the Attorney General's Office is seen outside Mossack Fonseca law firm office during a raid for the Odebrecht corruption case in Panama City, Panama February 9, 2017. REUTERS/Eduardo Grimaldo

"Raid of offices of law firm that created limited liability companies in Brazil linked to #LavaJato #PanamaPapers," the attorney general's office said on Twitter, without providing more details.

The Panama Papers, which consist of millions of documents stolen from Mossack Fonseca and leaked to the media in April 2016, provoked a global scandal after showing how the rich and powerful used offshore corporations to evade taxes.

Ramon Fonseca, a partner at Mossack Fonseca, denied that his firm had a connection to Odebrecht [ODBES.UL], which has admitted to bribing officials in Panama and other countries to obtain government contracts in the region between 2010 and 2014.

"Mossack Fonseca has no relationship with Odebrecht, nor with any other Lava Jato company," Fonseca told reporters, referring to companies involved in the so-called Lava Jato probe centered on Brazil's state-run oil company Petróleo Brasileiro SA.

"They're using me to divert attention," he said.

Fonseca also accused Panamanian President Juan Carlos Varela of directly receiving money from Odebrecht, Latin America's largest engineering company.

"He (Varela) told me that he had accepted donations from Odebrecht because he could not fight with everyone," Fonseca said, without giving more details.

At a media conference, Varela denied he received donations from Odebrecht, saying he would make all donations to his political campaign public on Friday.

Odebrecht did not respond immediately to requests for comment.

Reporting by Elida Moreno; Writing by Natalie Schachar; Editing by Paul Tait

Our Standards: *The Thomson Reuters Trust Principles.*

EXHIBIT F

Panama raids homes of law firm partners in Brazil bribe case

Union workers protest corruption outside the Public Ministry in Panama City, Friday, Feb. 10, 2017. Panama's Attorney General's Office ordered a search of offices belonging to law firm Ramon Fonseca Mora, a partner at Mossack-Fonseca, accusing the firm of setting up offshore accounts that allowed Brazilian construction company Odebrecht to funnel bribes to various countries. *(Associated Press)*

Associated Press

Updated
2/10/2017 7:59 PM

PANAMA CITY -- Panamanian anti-corruption prosecutors have searched the homes of the partners of a law firm accused of setting up offshore accounts that allowed a Brazilian construction company to funnel bribes to multiple countries.

Public Ministry agents arrived Friday at the homes of Ramon Fonseca Mora and Jurgen Mossack of the Mossack-Fonseca firm.

The two men have been in custody for questioning since Thursday, when the law firm's offices were searched.

Fonseca claims the case is about seeking a "scapegoat" to avoid a true investigation of who accepted bribes from the company.

Brazilian construction giant Odebrecht has admitted to paying some $800 million in bribes across Latin America.

EXHIBIT G

Blog / 4 Apr 2017

THREE YEARS AFTER RELEASE, PANAMA PAPERS REMAIN EVERGREEN - UPDATED

Mark Hays (/en-gb/blog/?author=Mark Hays)

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Three years on, the impact of the Panama Papers has been profound. Government officials and company executives have resigned and been sacked. Criminal charges have been filed. More than $1.2 billion in fines and back taxes have been collected by governments (https://www.icij.org/investigations/panama-papers/panama-papers-helps-recover-more-than-1-2-billion-around-the-world/) across the world. The trove of data has provided countless leads for further (https://www.globalwitness.org/en-gb/campaigns/oil-gas-and-mining/indonesias-shifting-coal-money/) investigations by Global Witness and others – including Out of Africa (https://www.globalwitness.org/it/campaigns/democratic-republic-congo/out-of-africa/), and our investigation into millions of dollars being shifted offshore (https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/indonesias-shifting-coal-money/) from Indonesian coal companies.

But, arguably, the biggest impact of the exposé has been to affirm the power of transparency as a tool to uncover wrongdoing and to hold the powerful to account.

When the International Consortium of Investigative Journalists (ICIJ) released the Panama Papers in April 2016, the sheer size of the leak was shocking; millions of documents and hundreds of thousands of secret companies, spanning across 2 terabytes of data (https://panamapapers.icij.org/blog/20160425-data-tech-team-ICIJ.html). Yet, what the data revealed was even more profound: a full cross section of offshore financial industry secrecy that showed countless links to organized crime (https://panamapapers.icij.org/20160425-cartel-arrests-uruguay.html) and serious financial wrongdoing, and exposed a myriad of public officials (https://panamapapers.icij.org/20160405-iceland-pm-resignation.html) and high-powered executives using this shadow financial system for private gain.

By November 2016, Europol reported that it had found 3 (https://www.theguardian.com/news/2016/dec/01/panama-papers-europol-links-3500-names-to-suspected-criminals),469 probable matches (https://www.theguardian.com/news/2016/dec/01/panama-papers-europol-links-3500-names-to-suspected-criminals) to criminal and terrorist organizations when they compared the Panama Papers to their own files. Similarly, the Panama Papers provide an evergreen resource for journalists to cross-check as stories develop involving allegedly corrupt actors and politicians, including those currently occupying headlines in the U.S.

The media coverage following the release served to further amplify the Papers' impact. The Prime Minister of Iceland resigned. Dozens more political figures around the world, including figures in the UK government and the Trump Administration, are either under investigation or are being asked tough questions (http://www.charlotteobserver.com/news/politics-

government/article135[illegible]474.html) [illegible] Panama Papers-related scandal. Canada's Royal Bank closed more than forty bank accounts (https://www.bloomberg.com/news/articles/2017-03-07/rbc-closes-customer-accounts-as-panama-papers-review-concludes) after Panama Papers audits.

The Panama Papers validated the work of transparency campaigners like us at Global Witness who document how opaque shell companies, shadowy lawyers and complicit banks are constant parties to some of the biggest corruption scandals. We are encouraged by the swift calls from the global community for action in the wake of what the Papers revealed.

Over time, however, much else has changed. The political climate in the U.S., UK and elsewhere is filled with talk of 'fake' news, alternative facts and conspiracy theories on both ends of the political spectrum. The Panama Papers have been caught in the gravity of this; links to data found in the Papers are often pointed to as unassailable proof that dirty deeds are being done.

It is true that sometimes where there's smoke, there's fire. But, on this anniversary, it's important to step away from today's scandals and recognize the real value of the information contained in this unusual database. The Panama Papers are not like a treasure chest filled with scandals to be exhumed (though that may be true in some cases). Rather, the Papers are a vital repository of keys needed to unlock the scandals of today, and tomorrow.

This distinction matters because in many cases, we already know or suspect what scandals are out there. But, often we lack critical information to connect the dots, prove a case and use that proof to hold powerful actors accountable for their actions.

We've seen use of the kind of anonymous companies found in the Panama Papers turn up in our investigations—from unknown individuals who acquired a network of offshore-owned companies (https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/mystery-baker-street/) which in turn invested in £147million worth of prime property in some of London's most famous addresses, to bribery allegations in (https://www.globalwitness.org/en/press-releases/glencore-redirected-over-75-million-mining-payments-scandal-hit-friend-president-global-witness-reveals/)Africa (https://www.globalwitness.org/en/press-releases/glencore-redirected-over-75-million-mining-payments-scandal-hit-friend-president-global-witness-reveals/) linked to major U.S. hedge funds. Sometimes we're able to uncover the true owners of these companies and crack the case. More often, we and others are stymied by anonymity; the truth remains hidden, justice is not served.

This is why we advocate for transformative transparency initiatives like those related to conflict minerals and revenue transparency in extractive industries, as well as new registries coming online in the UK and EU that require companies to reveal their true owners.

We shouldn't have to wait for massive leaks like the Panama Papers to shed light on the inner workings of criminal and corrupt activities. We're certain there will continue to be corruption scandals and criminal activity that we and others will need to investigate to determine the truth. However, until we're able as a society to make transparency the rule, not the exception, both the real story and the transformative change we seek, making corruption and conflict a thing of the past, will elude us all.

So, on this anniversary, let's not only remember the stellar work of the global team of journalists who delivered the Panama Papers to the world and the valuable information they contain; let's remember why such information – and such revelations – are important in the first place.

Updated 5 April 2019

Mark Hays (/en-gb/blog/?author=Mark Hays)

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EXHIBIT H

Netflix Commits To Panama Papers Drama 'The Laundromat'; David Schwimmer Joins Soderbergh, Oldman, Streep, Banderas

By Mike Fleming Jr
October 9, 2018 1:53am

Shutterstock

EXCLUSIVE: Netflix has committed to finance and release *The Laundromat*, the Steven Soderbergh-directed drama about the Panama Papers scandal. David Schwimmer has just joined a killer cast led by Oscar-winning *Darkest Hour* star Gary Oldman, *The Post*'s Meryl Streep and *Life Itself*'s Antonio Banderas. Other cast circling include Will Forte and *Earthquake Bird*'s Riley Keough. The film has a script by Scott Z. Burns, based on the Jake Bernstein book *Secrecy World: Inside the Panama Papers Investigation of Illicit Money Networks and the Global Elite*. Producers are Lawrence Grey, Gregory Jacobs, Michael Sugar, Burns and Topic Studios. Douglas Urbanski is exec producer.

Gersh

Deadline first revealed the project back at Cannes and noted then that Netflix was hot and heavy in pursuit. This after Netflix previously set a movie on the scandal by German journalists Frederik Obermaier and Bastian Obermayer, who broke the story and wrote the book *Panama Papers: Breaking the Story of How the World's Rich and Powerful Hide Their Money*.

RELATED STORY

Sony Moves James Gunn Horror 'BrightBurn' To 2019

Schwimmer will play Matthew Quirk, an attorney who speaks on behalf of one of the insurance companies after 20 elderly passengers die on a boating excursion. The boating company learned its insurance isn't the large company it thought it was, but merely just a P.O. box in Nevis. Quirk would eventually kill himself after seeing no way out of the liability situation, but the incident triggers lawyers, government officials, and more to track down these shell companies. Those investigations lead to the laundering geniuses at the Panama-based law firm Mossack Fonseca, who created hundreds of thousands of "companies" to help the wealthy avoid paying taxes. Reams of documents were leaked from Mossack Fonseca in April by an anonymous whistleblower that bared embarrassing details on investments and money trails from politicians the world over, meant to evade taxes.

Dave

Allocca/Starpix/REX/Shutterstock

it was revealed he and his wife set up an offshore shell company in 2007 in the British Virgin Islands; he then sold his half of the company to his wife for $1 on the last day of 2009 to shield them from a new law that would have required him to declare his ownership as a conflict of interest. Among the swarms of famous people named in the leaked documents was current President of the United States Donald Trump — already embattled over charges his empire was built by avoiding taxes — and director Pedro Almodovar, Jackie Chan and Emma Watson. Bernstein was part of a team of journalists who formed the International Consortium of Investigative Journalists to break the Panama Papers story. The leak of data — 11 million records revealed — was the largest in corporate and government history.

This becomes the latest buzzy movie property for Netflix, which has the Alfonso Cuaron-directed *Roma* in the Oscar race along with *22 July*, the Paul Greengrass-directed drama on the worst terrorist attack in Norway's history that left over 70 dead, and the Coen Brothers-directed *The Ballad of Buster Scruggs*. Netflix separately has wrapped *The Irishman*, the crime drama that re-teams Martin Scorsese with Robert De Niro and Joe Pesci, and the action film *6 Underground*, which Michael Bay directs and which stars Ryan Reynolds.

Schwimmer, who is currently appearing in an arc of *Will & Grace* episodes, is repped at Gersh.

READ MORE ABOUT:

ANTONIO BANDERAS / DAVID SCHWIMMER / GARY OLDMAN / MERYL STREEP / NETFLIX / STEVEN SODERBERGH / THE LAUNDROMAT

3 Comments

3 Comments

Greg *on October 9, 2018 11:34 am*

I thought he was retiring

FRAN'S COURT *on October 9, 2018 10:01 am*

Gee, imagine the rich trying to hide their assets. Hopefully they can dramatize the book. Hope it's

Anonymous *on October 9, 2018 7:21 am*

When every studio passes...

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